

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

|  |   |                        |
|--|---|------------------------|
| T.H.E. INSURANCE COMPANY,                | : | 1:10-cv-1081           |
|  | : |                        |
| Plaintiff,                               | : |                        |
|  | : |                        |
| v.                                       | : |                        |
|  | : |                        |
| KEVIN CLANCY,                            | : | Hon. John E. Jones III |
| WEST SHORE EVANGELICAL                   | : |                        |
| CHURCH, KENNETH BOONE,                   | : |                        |
| Individually and as parent and Natural   | : |                        |
| Guardian of Kendell Boone, a minor, CITY | : |                        |
| LIMITS ASSEMBLY OF GOD,                  | : |                        |
| DAVID H. ADAMS, d/b/a NOAH'S             | : |                        |
| WORLD and NOAH'S WORLD, INC.,            | : |                        |
|  | : |                        |
| Defendants.                              | : |                        |

**AMENDED MEMORANDUM**<sup>1</sup>

**December 14, 2010**

**THE BACKGROUND OF THIS MEMORANDUM IS AS FOLLOWS:**

This interpleader action was filed by Plaintiff T.H.E. Insurance Company ("T.H.E.") on May 20, 2010. T.H.E. had issued a commercial general liability insurance policy, no. 00M7MF5661 to David H. Adams, d/b/a Noah's World,

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<sup>1</sup> Due to what we confess was a lack of careful reading, this Court misapprehended the releases executed by the parties and thus mischaracterized both the releases and their legal effect in our Memorandum dated December 8, 2010. Plaintiff's counsel thereafter filed a letter on the docket, dated December 10, 2010 that sets forth the inaccuracies the said Memorandum. As a result, we are issuing this Amended Memorandum and separate Amended Order to correct the errors previously made by us.

located at 2583 Black River Road, Bethlehem, Pennsylvania. The policy period extended from 8/15/07 to 8/15/08, with an occurrence and general aggregate limit of \$ 1 Million Dollars.

The statute of limitations for claims to be made under the policy has run, and to date there are only two actions filed against David H. Adams, d/b/a Noah's World, which are as follows:

- (1) **The Boone claim** - This is a claim filed on behalf of Kendell Boone for personal injury in the Court of Common Pleas County, Pennsylvania, docket number 2009-C-5804; and
- (2) **The Clancy claim** - This is a claim filed on behalf of Kevin Clancy for personal injury in the Court of Common Pleas of Lehigh County, Pennsylvania, docket number 2010-C-3796.

T.H.E. has deposited the policy limit of \$ 1 Million Dollars with the Clerk of this Court in compliance with our July 6, 2010 Order.

As set forth in a Stipulation (Doc. 33) filed by T.H.E., Boone and Clancy, these parties have agreed upon a division of the monies as follows:

- \$18,000 - payable to Boone plaintiff
- \$982,000 - payable to Clancy plaintiff

In exchange for the above-listed monetary payments, the Boone plaintiff will provide a full and complete release to David H. Adams and Noah's World. The Clancy plaintiff will execute a pro rata joint tortfeasor release and settlement agreement. It is this agreement that triggers the controversy we must resolve.

All of the parties with an interest in the interpleader monies agreed to the Stipulation with the exception of West Shore Evangelical Church and City Limits Assembly of God (the "Churches"). Notably, however, it is our view that the Churches have neither standing nor a legal basis to object to the release of the monies.

Thus, we confirm that the pro rata Joint Tortfeasor's Release and Settlement Agreement, as attached to the Stipulation (Doc. 33) is enforceable pursuant to its terms. See Pennsylvania's Uniform Contribution Among Tortfeasors Act, 42 Pa.C.S.A. §§ 8326, 8327. Accordingly, we shall adopt the Stipulation (Doc. 33) as filed and direct that the funds be released. An appropriate Amended Order shall issue.<sup>2</sup>

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<sup>2</sup> Additionally, on today's date we shall enter a separate Order that releases T.H.E. from its obligation to pay any claim or judgment, or to defend any suit, past, present or future, which may be brought against David H. Adams d/b/a Noah's World and Noah's World, Inc. for the policy period of August 15, 2007 to August 15, 2008, for general liability insurance policy 00M7MF5661, aside from the funds remitted by T.H.E. in this interpleader action.

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| WORLD and NOAH'S WORLD, INC.,            | : |                        |
|  | : |                        |
| Defendants.                              | : |                        |

**AMENDED ORDER**

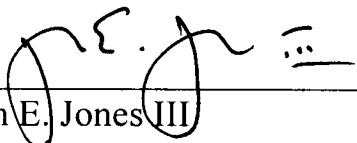
**December 14, 2010**

In accordance with the Memorandum issued on today's date, it is hereby

**ORDERED** that:

1. The Stipulation (Doc. 33) is **ADOPTED** and the monies deposited with the Clerk of this Court on July 29, 2010 (Doc. 18) shall be disbursed immediately in accordance with the Stipulation.
2. The Joint Motion for Release of Insurance Proceeds (Doc. 22) is **DISMISSED** as **MOOT**.

3. This case remains **CLOSED**.



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John E. Jones III  
United States District Judge